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### AUTHORITIES CITED.


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IN THE

# SUPREME COURT of the UNITED STATES

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OCTOBER TERM, 1946.

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C. B. WOOD,
Petitioner,

Vs. No. .....

CHESTER BOWLES, Administrator,
Office of Price Administration,
Respondent.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS SIXTH CIRCUIT.

Petitioner, C. B. Wood, prays this Court to review, on writ of certiorari, a judgment rendered May 29, 1946,

by the United States Circuit Court of Appeals for the Sixth Circuit in the above entitled cause. The Circuit Court, without filing an opinion, affirmed the judgment of the District Court, of the Western District of Tennessee, at Memphis, in the following words:

> "It appearing that the issue submitted to the District Court was solely one of fact, that the finding made by the Court is supported by substantial evidence, that we are not able to perceive any clear error therein, nor any error in the procedure at the hearing, or in the judgment and sentence,
>
> IT IS HEREBY ORDERED That the judgment below be, and it is,
>
> AFFIRMED." (Tr. 115.)

The judgment of the District Court has this conclusion:

> "The Court, therefore, finds the respondent Wood has sold and delivered a used Chevrolet automobile at a price higher than the maximum price permitted by Maximum Price Regulation No. 540 of the Office of Price Administration, and in violation and disobedience of the Court's injunctive decree heretofore entered on the 4th day of April, 1945." (Tr. 102, 103).

Sentence of 90 days in jail was imposed. (Tr. 105, 106).

Petitioner appealed to the Circuit Court of Appeals,

and assigned errors of law therein, with the results above stated.

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## SUMMARY STATEMENT.

On May 2, 1945, Chester Bowles, Administrator of the Office of Price Administration, filed a complaint against C. B. Wood, d/b/a C. B. Wood Motor Company, on the basis of Emergency Price Control Act of 1942, as amended, Maximum Price Regulation No. 540, (9FR 6434), effective July 10, 1944, alleging that defendant Wood was violating said regulations by selling auttomobiles in excess of the ceiling prices fixed thereby, and seeking an injunction against Wood to restrain further violations. (Tr. 2).

A final injunction was granted and became effective May 6, 1945. (Tr. 5).

The petition for citation for contempt for violation of the injunction was filed on August 1, 1945, alleging a violation by defendant Wood, in that, as alleged in the petition,

> "On the sixth day of July, 1945, in Memphis, Tennessee, the defendant sold, transferred and disposed of a used 1941 Chevrolet club coupe passenger automobile to one J. G. Mallard for the sum of

approximately $1400.00, said sum being approximately $350.00 in excess of the maximum ceiling price for the sale of said used passenger automobile as set out and established by Maximum Price Regulation 540 of the Office of Price Administration and being the same regulation involved in the original complaint." (Tr. 6, 7).

The above is the only specific allegation in the petition, nothing being said about the exchange or swap of cars, and no mention being made of the Pontiac automobile of Mallard. (Tr. 6, 7).

The trial court in its Finding of Facts, found that in closing this deal, at Wood's instance, the transfers were carried out separately; that Wood paid Mallard $682.00 for the Pontiac, this being the ceiling; and that the ceiling on the Chevrolet was $1050.00, but Mallard executed notes to a finance company, from which Wood got $700.00, and also Mallard made two cash payments to Wood— one for $350.00, and the other, $320.00, the sum of $12.00 being withheld by Mallard pending repairs or the replacement of a muffler. (Tr. 101, 102).

Appellant, C. B. Wood, was charged in the petition filed by the Appellee with criminal contempt by selling to J. G. Mallard a Chevrolet car for $1400.00— $350.00 in excess of the ceiling price.

Wood claimed thatt he bought a Pontiac car from Mallard, for which he paid Mallard $682.00, the ceiling

price, giving his check therefor; that he then sold to Mallard a Chevrolet car for the ceiling price of $1050.00; that Mallard procured a loan on the Chevrolet of $700.00, and paid him $338.00 in cash, leaving a balance due Wood of $12.00, which was paid by a charge for a muffler.

Mallard claimed that he swapped his Pontiac to Wood for the Chevrolet, and paid Wood $700.00 difference. (Tr. 20, 33). He says, in carrying out the swap, he borrowed $700.00 on the Chevrolet and turned it over to Wood, and gave Wood $350.00, plus $320.00, making a total of $1370.00.

The trial court adopted Mallard's view, and found that,

> "J. G. Mallard entered into a deal with respondent Wood, whereby Mallard agreed to trade his used 1939 Pontiac automobile to Wood in exchange for his used 1941 Chevrolet coupe, and pay Wood a difference of $700.00 in cash." (Tr. 101, 102).

As a mere method in carrying out such a swap, two separate sales procedures seemed to have been foollowed (although the amount involved in one is disputed), which indicates an apparent violation of the OPA law, and, since the trial court has adopted the theory of a swap, whether or not a real violation of this law occurred, depends upon tthe **reasonable value** of the Pontiac car, and the record is silent on this point.

## JURISDICTION OF THIS COURT.

Jurisdiction of this Court is based on Section 240 of the Judicial Code, as amended. (Mar. 3, 1891, Ch. 517, Sec. 6; 26 Stat. 828; Mar. 3, 1911, Ch. 231, Sec. 240, 36 Stat. 1157; Feb. 13, 1925, Ch. 229, Sec. I., 43 Stat. 938; Jan. 31, 1928, Ch. 14, Sec. I, 45 Stat. 54; June 7, 1934, Ch. 426, 48 Stat. 926).

> "In any case civil or criminal, in a Circuit Court of Appeals, or in the United States Court of Appeals for the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after the judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted appeal."

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## SPECIFICATIONS OF ERRORS.

Your Petitioner respectfully submits that the Circuit Court of Appeals erred in the following respects:

### I

The Circuit Court of Appeals erred in failing to

perceive error in, and affirming the judgment of the District Court, holding petitioner to be in contempt of court because he had sold a Chevrolet automobile at $1370.00, in excess of its OPA ceiling price of $1050.00, in violation of an injunction against sales above ceiling price, which holding was based on a finding of fact that petitioner had swapped the Chevrolet for a Pontiac automobile of Mallard, the complaining witness, for a difference of $700.00 to petitioner, and the further finding that separate sales procedure was used to accomplish the swap, Mallard's (1939) Pontiac being put through the sales procedure at $682.00, and the Chevrolet (1941), at $1370.00 (really $1370.00 plus $12.00 allowed for adjustment of a muffler), a total of $1382.00.

The error was one of law, in that when the Court basically found that a swap occurred, it could not declare this swap illegal, or contrary to the injunction, unless it knew the **reasonable value**, as distinguished from **ceiling price** of the Pontiac, for, under the express terms of the OPA law, the Pontiac owner could accept less than ceiling, provided petitioner, a dealer, did not crowd him down below a **reasonable value**. Thus, knowledge of the reasonable value of the Pontiac was essential, and there was neither allegation nor proof on that.

The only material question (neither pleaded nor proven) in the case of the swap as found, was whether the $700.00 differential when added to the reasonable value

(unknown) of the Pontiac exceeded $1050.00, the Chevrolet ceiling price.

The fundamental error of the District Court, in which the Circuit Court concurred, was in sublimating the subsidiary finding that the Chevrolet was put through the process at $1370.00 ($1382.00), into a determinative place, when it was immaterial how the swap was accomplished, whether by the values used, $682.00 as against $1382.00, or $1300.00 as against $2000.00, or $100.00 as against $800.00, so long as there was a difference of $700.00.

The petition for citation for contempt merely alleged sale of the Chevrolet for approximately $1400.00, with no mention of the Pontiac, or a swap, or the reasonable value of the Pontiac. Petition for citation— Tr. 6, 7; Findings of District Court— Tr. 101, 103; Judgment of Circuit Court of Appeals— Tr. 115.

## II

The Circuit Court of Appeals erred in not perceiving the error of the District Court in failing to follow the rule of reasonable doubt.

The case was one of criminal contempt, as the District Court declared, (Tr. 103), yet the District Court, trying the case without a jury, did not find against the petitioner "beyond a reasonable doubt", but used instead another standard affording less protection to the accused, to-wit, quoting from the Findings:

"I have considered very carefully and I find that, etc." (Tr. 101).

Petitioner defending against a criminal contempt charge was entitled to the protection of the rule of "reasonable doubt", whether tried before a judge or a jury.

This error was called to the attention of the Circuit Court of Appeals, and that Court erred in not perceiving the error, and reversing the judgment, of the District Court.

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## REASONS RELIED ON FOR GRANTING THE WRIT.

### I

The case is substantial, involving the liberty of a citizen, and important in that it involves the question of inroads on the procedural safeguards of the Bill of Rights (In Re: Michael, 66 S. Ct., 78), and the question of the proper use of the injunction-contempt method of enforcing criminal laws, and the temptation of Government Bureaus to invoke the use of this more speedy, and more efficient procedure, to the neglect of the citizen's rights under the Bill of Rights.

Also involved is the question of whether or not a defendant in a criminal contempt charge who has testified to his version of the facts, and has heard his version

rejected by the trial court, and the version of the complaining witness adopted as the true version of the facts, has not the right then to stand upon the adopted version and say that as a matter of law his version does not make out a case for fatal lack of an essential element.

Also involved is the proposition that when a court has made a finding of the facts, it should then look upon the whole picture of the facts, as did this Honorable Court, in the case of Mortensen vs. U. S., 64 S. Ct., 1037, in order to determine innocence or guilt, and not base conclusions of guilt upon one branch of the case, or one leg of a journey, or one feature of a trade or swap.

The OPA law definitely provides that any person may accept less than the ceiling price for his automobile:

OPA MPR 540.

Sec. 4. "Less than Maximum Prices. Prices lower than the maximum prices established by this regulation may be charged and paid."

Therefore, two citizens may freely and legally swap their automobiles; one may accept as little as $100.00 for his automobile, and the other may legally pay it. A swap is definitely different from a single straight sale.

There is one limit to this proposition, and that is in the case of a dealer. The dealer may not require the

other party to accept less than **reasonable value** for his automobile:

OPA MPR 540

Sec. 9. Evasion: "Or where there is an exchange, transfer or trade-in, to require him to accept an allowance for the vehicle, product of commodities exchanged, transferred, or traded in, which is below its reasonable value."

Thus a new concept is brought in where a dealer is concerned; the concept of reasonable value, a concept altogether different from **ceiling price**. These two are by no means the same, for an automobile may be, and often is, worth far less than the rated ceiling for same, due to its mechanical condition. It may be a piece of junk, or mechanically imperfect, and not worth ceiling, or anywhere near it.

It is this very important item that was missing from the picture of the facts as found by the trial court; an item without which it is impossible to know whether or not there has been any violation of either the OPA law, or regulations, or the injunction based thereon.

III

This important, determinative item, the **reasonable value** of the Pontiac automobile, was not pleaded, and was not proven. The petition for citation for contempt merely alleges a straight sale of the Chevrolet for approx-

imately $1400.00, and makes no mention of the Pontiac. (Tr. 6, 7).

Petitioner, as defendant, was under no kind of duty to see that adequate pleadings, followed by sufficient proof, covered this item. He had the right to defend against the straight charge, of a single sale, and did so. His version was rejected, and the version of the prosecution adopted. Now, petitioner has the right to stand upon the whole picture of the facts as found, and to say as a matter of law, they lack a vital, determinative element, to show a violation.

IV

In view of the use of the injunction-contempt shorter method of accomplishing an enforcement of the criminal features of the bureau laws and regulations, it becomes highly important to see that the citizen gets the benefit of the Bill of Rights, that the "reasonable doubt" standard of evidence be used as it would have been under direct criminal procedure, Grand Jury, Jury trial, etc.

This standard was not followed in the instant case, for the trial judge expressly states the use of another standard, indicated by his words, "I have considered very carefully ....."

IN RE: MICHAEL, 146 F. 2nd, 627, 66 S. Ct., 78.

The Government in its brief before the Circuit Court of Appeals conceded that the "reasonable doubt" rule

was the standard, taking language from the opinion of the Third Circuit in the Michael case:

> "It is the standard by which the evidence leading to or sustaining a conviction must be measured."

The Government's Brief, on page 14, cites the Michael case opinion of the Third Circuit, and states that certiorari has been denied as shown in 65 S. Ct., 914. This is error. Certiorari was granted, and the case disposed of in 66 S. Ct., 78, the Third Circuit being reversed.

In the opinion of the Third Circuit Court of Appeals (3rd Circuit), this language appears in re: Michael, Supra:

> "The appellant also complains that the judgment does not recite that the Court found him guilty beyond a reasonable doubt. **The Judge did make a statement of such finding** in open court, but the argument is that the judgment itself is what controls, not the oral explanation or comment which accompanied it. Counsel for the U. S. answers that the finding of guilt beyond reasonable doubt does not need to be included in the Judge's order, any more than such a finding needs to be included in a jury's verdice. It is the standard by which the evidence leading to, or sustaining, conviction must be measured. It does not have to be formally written into either. We think the Government's position is sound, and, in the absence of conclusive authority to the contrary, none of which has been cited, we adopt it."

While this Honorable Court reversed the Third Circuit without adverting to the above language, we, nevertheless, feel that we may here point out the fact that in the Michael case, the trial judge did expressly state that he found guilt beyond **a reasonable doubt**, the only point raised being that this expression should have been included in the formal judgment. Plainly, the assurance that the trial court had used the rule was ample, and a formal expression in the judgment itself was unimportant.

In the instant case, we not only have no assurance whatever, formal or informal, that the trial judge ever thought of the rule of reasonable doubt, but we have that Court's express statement of another method, that of very careful consideration, which statement excludes the idea that the Court observed the rule of reasonable doubt.

The criminal trial and conviction of petitioner has thus been accomplished, in true effect, without his having had the protection of the Bill of Rights.

WHEREFORE, your petitioner prays that a Writ of Certiorari may be issued out of, and under the seal of, this Court to the Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court, on a day certain to be designated, a certified transcript of the case entitled there, C. B. Wood, Appellant, vs. Chester Bowles, Admr., Office of Price Administra-

tion, Appellee, No. 10,209, to the end that said case may be reviewed and determined by this Court and that Petitioner may have such relief as this Court may deem proper, lawful and equitable, and that the opinion and judgment of the Circuit Court of Appeals and the District Court may be reversed.

C. B. WOOD,

Petitioner.

WILS DAVIS,

Memphis, Tennessee.

Attorney for Petitioner.

W. H. FISHER,

Memphis, Tennessee,

Of Counsel.

C. B. WOOD,
Petitioner,

Vs. No. .....

CHESTER BOWLES, Administrator,
Office of Price Administration,
Respondent.

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## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

This brief in support of the petition for Writ of Certiorari seeks to reverse the judgments of the Circuit Court of Appeals for the Sixth Circuit, and the District Court for the Western District of Tennessee, Western Division.

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### STATEMENT.

C. B. Wood, an automobile dealer in Memphis, was the defendant in an injunction suit brought by Chester Bowles, Administrator of the Office of Price Administration, seeking to enjoin Wood from selling used automobiles in excess of the maximum ceiling price. (Tr. 2, 3).

A final decree of injunction was issued upon a consent order. (Tr. 5).

The injunction decree was dated May 4, 1945, and, on August 1, 1945, the OPA Administrator filed a petition for citation for contemph, alleging that Wood had, on July 6th, sold a 1941 used Chevrolet automobile to J. G. Mallard for $1400.00, in excess of the ceiling price of $1050.00.

The Court tried the case without a jury, and found the defendant guilty, but the Court found that the defendant Wood had swapped his Chevrolet for a 1939 used Pontiac of Mallard's for a difference of $700.00, and that, in carrying out this swap, the Chevrolet was sold at $1370.00, or $1382.00, and the Pontiac at $682.00. The trial Court concluded that the defendant was guilty on these findings.

On appeal, errors were assigned in the Circuit Court of Appeals, but that Court failed to perceive any error, and affirmed the District Court's judgment, without an opinion.

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## SUMMARY OF ARGUMENT.

### THE OPA LAW:

For the convenience of the Court, the pertinent pro-

visions of the OPA laws and regulations are set forth in an appendix to this brief.

1. Under the OPA law, an owner may accept less than the ceiling price for his automobile. So, two persons may innocently swap automobiles for a difference of $700.00. (Section 4 OPA Regulations).

2. In the case of a dealer, such as Wood, the OPA law provides, in Section 9, that the dealer may not require the other party to accept less than a reasonable value for his automobile.

3. When the District Court found that a swap had occurred, it made necessary a knowledge of the reasonable value of the Pontiac automobile for the determination of the innocence or guilt of the defendant Wood.

4. The record is silent on this essential element, both in the pleadings and in the proof.

5. When there is lacking an element essential to guilt, this Honorable Court can declare as a matter of law that the specific case is not established, as it did in the case in re Michael, 66 S. Ct., 78.

6. In the Michael case, the essential element found to be lacking was "obstruction", and, although it plainly appeared that there was guilt of perjury, the Court found that this perjury was not shown to have been an obstruction.

The lack, in the instant case, of knowledge of the reasonable value of the Pontiac is just as fatal as in the Michael case, and greater, because this lack spells out entire innocence.

7. This Honorable Court did not hesitate in the Michael case to overrule the conclusions drawn by the lower courts upon their fact findings. In the instant case, the District Court's conclusion (last paragraph in the Findings of Fact, Tr. 102 103), that Wood had sold and delivered the used Chevrolet automobile at a price higher than the maximum price permitted by the OPA, and in violation of the Court's injunction, was erroneous in law, because the Court had also found that the selling of the Chevrolet was done as a matter of detail in carrying out the swap of the Chevrolet for the Pontiac, and there was no knowledge of the reasonable value of the Pontiac, and no basis for declaring the swap illegal.

8. In the instant case, the prosecution seized upon, and confined its pleadings to, one branch of a duplex matter, in that it merely alleged a sale of a Chevrolet for money, and, by these pleadings, ignored the other branch of the matter— that a Pontiac was swapped for the Chevrolet, and that the sales of these two cars were merely processes in the swapping. In this practice, the prosecution followed the tactics of the Government in the case of Mortensen vs. United States, 64 S. Ct., 1037, in which case the prosecution indicted a man and his wife

under the Mann Act, on the basis of one leg of a journey, ignoring the other part of the round trip, and saying nothing about that. The prosecution thus produced an apparent violation of the Act, but this Honorable Court looked upon the whole picture of the facts— upon both parts of the round trip— and reversed the lower courts.

In the instant case, we ask the Court to pass upon the whole set of facts; that is, the swapping of the cars from which it will be apparent that a conclusion of guilt cannot correctly follow, in the absence of knowledge about the reasonable value of the Pontiac.

9. This Honorable Court, along with the Congress, has a lively concern for the procedural safeguards of the Bill of Rights, as indicated in re Michael, supra, and closely watches the limits of the power of the courts to punish for contempts, because of the summary method of procedure involved.

Courts must have power to protect their own operations, and, when this is obstructed in any way, a speedy method of trial is a necessity. In the instant case, we do not have anything involved that interferes with the Court itself, but we have, instead, a substitutionary method of enforcing criminal laws. In such a situation, the procedural safeguards of the Bill of Rights can be applied, and when the Court tries such a contempt charge without a jury, he should be required to find guilt beyond

a reasonable doubt, as would the jury. (In re Michael, 146 Fed. (2d) 627).

In the instant case, the Court used quite another standard, expressly stating the same in the words "I have considered very carefully and I find .....". (Tr. 101). The use of these words excludes the possibility that the trial Judge gave any thought to the rule of reasonable doubt, which was applicable. While the trial Court may have considered the case very carefully, it is apparent that his finding was simply based upon a mere preponderance of the evidence, in the Court's opinion. The net result of all this is that petitioner has been effectively found guilty of a crime without any benefit of the procedural safeguards of the Bill of Rights.

WHEREFORE, we respectfully submit that this Honorable Court should grant the Writ of Certiorari and review the judgments of the Circuit Court of Appeals for the Sixth Circuit, and the District Court, and reverse the same.

Respectfully submitted.

WILS DAVIS,
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Attorney for Petitioner.

W. H. FISHER,
Memphis, Tennessee,
Of Counsel.

## APPENDIX.

### MAXIMUM PRICE REGULATION 540.

The pertinent portions of Maximum Price Regulation 540 are:

SEC. 2. Prohibition against dealing in used cars at prices above the maximum. (a) On and after July 10, 1944, regardless of any contract or other obligation, except as provided in paragraphs (b), (c), and (d):

(1) No person shall sell or deliver any used car at a price higher than the maximum price permitted by this regulation, except as provided in paragraph (d);

SEC. 4. Less than maximum prices. Prices lower than maximum prices established by this regulation may be charged and paid.

SEC. 9. Evasion. It shall be a violation of this regulation to charge a price above the applicable maximum price in connection with any sale of a used car, either alone or in conjunction with any other consideration, even though the price increase appears only indirectly. Specifically, but not exclusively, the seller is not permitted to require the purchaser, as a condition of the sale or transfer of the car, to

make payment over a period of time, to require him to finance the purchase through any particular lending agency; to require him to purchase any equipment, accessories, repairs, parts or services so as to increase the total compensation above the maximum price; to require him to purchase any other commodity or service; or to require him to make payent in whole or in part by exchanging or transferring, or trading in, any other vehicle or other product or commodity, or where there is an exchange, transfer or trade-in, to give him an allowance for the vehicle, product or commodity exchanged, transferred or traded in which is below its reasonable value.